

STATE OF MICHIGAN
COURT OF APPEALS

In re KK MOSELEY, Minor.

UNPUBLISHED
September 22, 2015

No. 325642
Wayne Circuit Court
Family Division
LC No. 10-492716-NA

Before: GADOLA, P.J., and JANSEN and BECKERING, JJ.

PER CURIAM.

Respondent appeals as of right the trial court's order terminating her parental rights to the minor child KKM pursuant to MCL 712A.19b(3)(f) (child has a guardian and the parent, despite having the ability to do so, fails to support or contact the child for a period of two years or more). We affirm.

This is respondent's third termination case. Her rights were previously terminated to two other children, NMH and JMR, due to abuse and neglect. See *In re Houston*, unpublished opinion per curiam of the Court of Appeals, issued June 10, 2008 (Docket No. 281283). See also *In re Rodgers*, unpublished opinion per curiam of the Court of Appeals, issued June 11, 2015 (Docket No. 324260).

Respondent is the natural parent of KKM. Two days after KKM was born, respondent consented to his placement with a friend under a limited guardianship. She later terminated the limited guardianship and placed KKM with petitioners under a full guardianship in January 2011, when KKM was four months old. At the hearing for petitioners' guardianship, respondent told the court that she agreed to the guardianship so that petitioners could later adopt KKM. In January 2014, petitioners were authorized to adopt the child. In August 2014, petitioners filed an amended petition alleging that respondent neither supported nor maintained contact with KKM and sought termination of her parental rights.¹ Despite her statements during the guardianship hearing, respondent argued in the trial court that she never intended to go through with the adoption and agreed to petitioners' guardianship only because she needed temporary assistance.

¹ The termination petition was originally filed in April 2014. It was amended to identify and request termination of the rights of KKM's putative father, who did not appeal the trial court's decision.

On appeal, respondent does not challenge the trial court's finding that petitioners established a statutory ground for termination under MCL 712A.19b(3)(f), or that termination was in the child's best interest. Rather, she asserts that the termination violated her constitutional right to parent KKM. We disagree.

Whether child protective proceedings complied with a respondent's constitutional procedural and substantive due process rights is a question of law we ordinarily review de novo. See *In re TK*, 306 Mich App 698, 703; 859 NW2d 208 (2014), citing *In re Rood*, 483 Mich 73, 91; 763 NW2d 587 (2009). But where, as here, the claimed constitutional error is unpreserved, this Court's review is limited to plain error affecting substantial rights. *In re TK*, 306 Mich App at 703; *In re Utrera*, 281 Mich App 1, 8; 761 NW2d 253 (2008).

"Parents have a significant interest in the companionship, care, custody, and management of their children, and the interest is an element of liberty protected by due process." *In re JK*, 468 Mich 202, 210; 661 NW2d 216 (2003). In termination proceedings, the respondent's interest in parenting her child is weighed against the child's interest in a normal and safe family home. *In re Moss*, 301 Mich App 76, 86-87; 836 NW2d 182 (2013); *In re VanDalen*, 293 Mich App 120, 132-133; 809 NW2d 412 (2011). At the statutory-grounds stage, the respondent and the child share an interest in the prevention of an erroneous termination of their natural relationship until the petitioner establishes parental unfitness. *In re Moss*, 301 Mich App at 87. Once the respondent is found to be unfit, her interest may diverge from that of her child at the best-interest stage, where the child's need for permanence, safety and stability is paramount. *Id.*; see also *In re Foster*, 285 Mich App 630, 635; 776 NW2d 415 (2009) ("[O]nce a statutory ground is established, a parent's interest in the care and custody of his or her child yields to the state's interest in protection of the child."). "A due-process violation occurs when a state-required breakup of a natural family is founded solely on a 'best interest' analysis that is not supported by the requisite proof of parental unfitness." *In re JK*, 468 Mich at 210.

In this case, there was ample evidence that respondent was not fit to care for KKM and the termination was not based solely on the best-interest analysis. Petitioners sought termination of respondent's parental rights pursuant to MCL 712A.19b(3)(f), which provides:

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

* * *

(f) The child has a guardian . . . and both of the following have occurred:

(i) The parent, having the ability to support or assist in supporting the minor, has failed or neglected, without good cause, to provide regular and substantial support for the minor for a period of 2 years or more before the filing of the petition or, if a support order has been entered, has failed to substantially comply with the order for a period of 2 years or more before the filing of the petition.

(ii) The parent, having the ability to visit, contact, or communicate with the minor, has regularly and substantially failed or neglected, without good cause, to do so for a period of 2 years or more before the filing of the petition.

The trial court did not clearly err in finding that petitioners offered clear and convincing proof of this statutory ground for termination. *In re VanDalen*, 293 Mich App at 139. See also *Santosky v Kramer*, 455 US 745, 769; 102 S Ct 1388; 71 L Ed 2d 599 (1982) (explaining that requiring a State to satisfy the clear and convincing evidence standard of proof before terminating parental rights adequately protects a parent's due process rights). Petitioners became KKM's legal guardians at respondent's own request on January 20, 2011. They filed an amended petition to terminate her parental rights in August 2014, so that they could formally adopt the child. It was undisputed that respondent had not visited, contacted, or offered any financial or other support for KKM since March 2012. While respondent asserted that she could not see KKM because petitioners refused to provide her with their telephone number or address, petitioners testified that she never requested this information and never provided them with her own contact information. Most tellingly, respondent failed to pursue any of the other means by which she could have contacted petitioners. Respondent first met petitioners and asked them to become KKM's guardians through their church, where they are known as members of the clergy. There is no reason why respondent could not have returned to the church if she wished to see her child, just as she did when she went there to visit KKM around Easter of 2011. In addition, respondent could have reached out to petitioners through the parties' mutual friend, "Ms. Madison," who had previously facilitated communication between the parties, and even arranged a visit for respondent and KKM in the summer of 2011. Petitioners' home address was also available to respondent on publicly filed guardianship documents. That respondent "didn't know that it was in the court file" because she is "not a lawyer," is no excuse. Respondent had previously petitioned for her friend to become KKM's guardian and petitioned to revoke petitioners' guardianship over KKM; she was familiar with the guardianship process. Further, her claim that petitioners insisted on paying for KKM's care did not negate her duty to support her child under MCL 712A.19b(3)(f). As the trial court stated, "[m]om has not done anything to support or assist in supporting the child. Even if it's not requested, even if it's not ordered[,] one still has a duty to do this."²

In sum, the trial court employed the appropriate procedures to ensure the protection of respondent's constitutional rights. See *In re Moss*, 301 Mich App at 87. Given that the trial court followed those procedures, employed the appropriate standard of proof, and did not clearly err in finding that a statutory ground for termination existed, respondent's liberty interest in parenting her child must yield. *In re Foster*, 285 Mich App at 635.

In addition, although not challenged by respondent, we find no error in the trial court's best interests determination. The record is replete with evidence to support the trial court's best interests finding. Respondent has twice had her parental rights to other children terminated, and this Court has observed that respondent's history of violent behavior, "anger management[,] and

² In finding that the statutory ground alleged in the petition was established, the trial court noted that additional grounds existed for termination. We need not address whether other statutory grounds, which were not alleged in the petition, existed because "[o]nly one statutory ground need be established by clear and convincing evidence to terminate a respondent's parental rights[.]" *In re Ellis*, 294 Mich App 30, 32; 817 NW2d 111 (2011).

other mental health issues” poses a threat of harm to her children, as demonstrated by her severe beating of then three-year-old JMR, and her subsequent attempt to conceal evidence of the abuse. *In re Rodgers*, unpub op at 2-4; *In re Houston*, unpub op at 3. Her disinterest in parenting was also more than evident. She petitioned to place KKM with a guardian only two days after he was born and admittedly told the court at petitioners’ guardianship hearing that she wanted to give KKM up for adoption. She visited KKM only four times over 3½ years despite her ability to contact petitioners. She often failed to appear for hearings in KKM’s and JMR’s termination cases³ and behaved inappropriately when she did appear. Though respondent later claimed that she did not intend to give KKM up for adoption, the trial court found otherwise, and this Court defers to the trial court’s special opportunity to judge the credibility of witnesses. *In re Fried*, 266 Mich App 535, 541; 702 NW2d 192 (2005). We see no reason to depart from that general rule here.

Affirmed.

/s/ Michael F. Gadola
/s/ Kathleen Jansen
/s/ Jane M. Beckering

³ JMR’s termination case was ongoing when petitioners filed their petition to terminate respondent’s parental rights. The trial court took judicial notice of the legal file in JMR’s case and considered respondent’s behavior in that case in terminating her parental rights to KKM.